

**Award No. 6396**

**Docket No. MW-6162**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Donald F. McMahon, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY  
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

(1) The Carrier violated the provisions of Article 4, Rule 5 of the effective agreement when they failed to advise relief section foreman and laborer W. E. Yount, of a vacancy in a position of section foreman, and required him to perform service at the laborer's rate of pay;

(2) That relief section foreman and laborer W. E. Yount, be paid the difference between what he received as Track Laborer and as relief section foreman and what he would have received had he been properly notified and assigned to the position of section foreman beginning on November 20, 1950, and continuing until violation is corrected.

**EMPLOYEES' STATEMENT OF FACTS:** On or about November 20, 1950, a vacancy occurred in the position of Section Foreman on Section No. 119 at Mound Valley, Kansas. The vacancy was not bulletined until January 2, 1951, although agreement provisions require that vacancies or new positions must be bulletined within ten days previous to or following the date such vacancies occur.

At the time the above referred to vacancy occurred, Mr. W. E. Yount was the senior relief foreman on the seniority district but the Carrier failed to advise him of the position which he had the right to fill, as required by agreement provisions.

Relief Foreman Yount suffered a loss of earnings because he was required to work in a lower class during the period of time herein involved and was required to travel to various locations for the remainder of the time to perform relief section foreman's service.

Relief Foreman Yount placed his bid for the position as bulletined on January 2, 1951, was the successful applicant and was assigned to the position on January 19, 1951.

Within a few days after the above referred to assignment, the claimant learned for the first time that the position had been temporarily filled by a

These men shall be used for relief assistant track foreman and or track foreman's work on their Roadmaster's district, and if their work as relief foreman or assistant foreman during the period of twelve consecutive months following their selection of relief work is satisfactory and they pass satisfactory examinations, they shall be eligible in the order of their written designation as relief foreman for promotion to assistant track foremanship and/or track foremanship on their Superintendent's operating district. Where conditions make necessary men may be promoted in less than twelve months."

which specifically provides that section laborers selected, as stipulated in that rule, to perform service as relief assistant track foremen and/or track foremen shall be used for such relief work on their Roadmaster's District. Mr. Yount's Roadmaster's District is the Oklahoma Subdivision, and not the Osage Subdivision on which Mound Valley is located. Mr. Stokes' Roadmaster's District is the Osage Subdivision on which Mound Valley is located and he was therefore used in accordance with Rules 1 and 5 of Article 4 to relieve Foreman of Section 119 at Mound Valley, Kansas, November 16, 1950. The Agreement was therefore complied with and not violated as alleged by the Claimant and the Petitioner.

As this claim is barred by the provisions of Rule 2, Article 24, and the handling in this instance was strictly in accordance with the provisions of Rules 1 and 5, Article 4, and not in violation of Rule 5, Article 4, as alleged by the Petitioner, the Carrier requests that the claim be denied.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of the Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employees or their duly authorized representatives. (Exhibits not reproduced.)

**OPINION OF BOARD:** The Organization contends Carrier has violated the provisions of Article 4, Rule 5 of the effective Agreement between the parties, by its failure to notify and advise relief section foreman, W. E. Yount, of a vacancy in a position of section foreman. Allegation is made that a vacancy occurred in the position of section foreman, Section 119; that the claimant herein was the senior relief foreman, but Carrier failed to advise claimant of such vacancy, in violation of Article 4, Rule 5 of the Agreement. The vacancy occurred November 20, 1950, and the claim is for the difference in pay between what claimant received as section laborer and what he would have received had he been assigned the position of relief foreman. The record does disclose the position in question was advertised on January 2, 1951, and that claimant was the successful bidder and was assigned the position on January 19, 1951.

Carrier contends, in addition to its complete denial of the claim, that the claim is barred under the provision of Article 24, Rule 2 of the 1949 Agreement. From a review of the record, we must hold that the events or circumstances on which this claim is based began on November 16, 1950, at the time the position of section foreman was vacant, when the regularly assigned foreman began his vacation and the position was assigned to J. W. Stokes, holding seniority junior to the claimant.

Since claim for a monetary recovery was not filed by this claimant within sixty (60) days, as provided by Article 24, Rule 2 of the Agreement, we must hold the claim was not filed within the limitations of the above rule, since the record clearly shows claim was not filed with the Carrier until January 29, 1951, approximately seventy-three (73) days after the event or circumstances arose, on which the claim was based. See Award No. 4554.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That claim is barred under limitations of Article 24, Rule 2 of the Agreement.

#### AWARD

Claim dismissed for reasons as stated in the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1953.